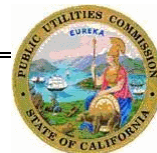


PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298

**FILED**

8-12-16

02:50 PM

August 12, 2016

Agenda ID #15102
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 12-04-019:

This is the proposed decision of Administrative Law Judge Gary Weatherford. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's September 15, 2016 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, ex parte communications are prohibited pursuant to Rule 8.3(c)(4)(B).

/s/ KAREN V. CLOPTON by S.K.Karen V. Clopton, Chief
Administrative Law Judge

KVC:lil

Attachment

Decision **PROPOSED DECISION OF ALJ WEATHERFORD** (Mailed 8/12/2016)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of California-American Water Company (U210W) for Approval of the Monterey Peninsula Water Supply Project and Authorization to Recover All Present and Future Costs in Rates.

Application 12-04-019
(Filed April 23, 2012)

**DECISION ON THE APPLICATION OF CALIFORNIA-AMERICAN
WATER COMPANY'S APPLICATION FOR APPROVAL
OF THE MONTEREY PENINSULA SUPPLY PROJECT
SPECIFICALLY IN REGARDS TO PHASE 2**

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**DECISION ON THE APPLICATION OF CALIFORNIA-AMERICAN
WATER COMPANY'S APPLICATION FOR APPROVAL
OF THE MONTEREY PENINSULA SUPPLY PROJECT
SPECIFICALLY IN REGARDS TO PHASE 2**

Summary

Against the backdrop of a 2012 Application and the 2016 Amended Application, this decision addresses Phase 2 issues. In particular, we authorize California-American Water Company (Cal-Am) to enter into a revised Water Purchase Agreement (WPA). The revised WPA provides that the Monterey Regional Water Pollution Control Agency (MRWPCA) sells purified water from its advanced treated Pure Water Monterey Groundwater Replenishment Project (PWMRP) to the Monterey Peninsula Water Management District, which will in turn sell it to Cal-Am for distribution to ratepayers in the Monterey District service area.

This decision also authorizes Cal-Am to build the Monterey Pipeline and Monterey Pump Station, subject to compliance with a Mitigation Monitoring and Reporting Program to address environmental issues. These facilities are necessary for the efficient and optimal use of the Aquifer Storage and Recovery system as well as the Groundwater Replenishment Project, including conveyance of water over a hydraulic gradient. The decision adopts a cost cap of \$45.6 million for the pipeline, and \$3.8 million for the pump station. Furthermore, the decision authorizes limited financing and ratemaking features, including cost-recovery of used and useful facilities via two advice letters.

This proceeding remains open to resolve Phase 1 issues relative to a certificate of public convenience and necessity for a proposed desalination plant and related facilities.

1. Groundwater Replenishment Project Background

In 1995, the State Water Resources Control Board (SWRCB) found that California-American Water Company (Cal-Am or applicant) did not have the legal right to about 10,730 acre-feet per year (AFY) of its then-current diversions from the Carmel River, and that the diversions were having an adverse effect on the river environment. The SWRCB directed applicant to cease and desist from its unlawful diversions. (SWRCB Order 95-10.)

For nearly twenty years the Commission has worked with applicant and a large number of diverse stakeholders to solve the water shortage and resulting environmental problems. In 2009, the SWRCB issued a cease and desist order (CDO) with a firm December 31, 2016 deadline for applicant to cease its unlawful diversions. (SWRCB Order WR 2009-0060.)

In 2010, the Commission authorized a Regional Desalination Project (RDP) to address the Monterey Peninsula water supply and environmental issues by the 2016 deadline. (Decision [D.] 10-12-016.) A groundwater replenishment project was considered but not adopted at that time. In 2012, the Commission authorized applicant to withdraw from the RDP given problems that were fatal to that project. (D.12-07-008.)

In April 2012, applicant filed the current application. The application proposed the Monterey Peninsula Water Supply Project (MPWSP) with new water supply by 2016 from three sources: aquifer storage and recovery project (ASR),¹ ground water replenishment project (GWR), and a desalination plant.

¹ The Monterey ASR project involves the injection of excess Carmel River water into the Seaside Groundwater Basin for later extraction and use. Future water sources for ASR may include the Pure Water Monterey Groundwater Replenishment Project and a desalination plant.

Applicant proposed the alternative of either a large desalination plant (9.6 million gallons per day) or a smaller desalination plant (6.4 million gallons per day) paired with the GWR. The GWR would be jointly developed, and water sold, by the Monterey Regional Water Pollution Control Agency (MRWPCA or Agency) and the Monterey Peninsula Water Management District (MPWMD or District). The water would be sold by the Agency and District to applicant pursuant to a Water Purchase Agreement (WPA). The GWR would treat and purify wastewater for potable use. The District became the lead agency for California Environmental Quality Act (CEQA) review of the ASR project, and the Agency became the lead agency for CEQA review of the GWR project. The Commission became the lead agency for review of the desalination project.

In 2015, the Commission's CEQA work on the desalination plant was necessarily delayed. This was in part due to the state review being joined with federal review, causing some delay but offering the potential for an overall quicker and more complete joint state Environmental Impact Report (EIR) and federal Environmental Impact Statement (EIS).

Given the necessary delays in the desalination project, applicant joined with others in an application to the SWRCB for an order to extend the 2016 deadline. On July 19, 2016 the SWRCB extended Cal-Am's the CDO deadline to December 31, 2021. The extension order requires that both applicant and the Commission meet several milestones by dates certain. One condition involves the Commission addressing the GWR and WPA by the end of 2016.

While the desalination project, if approved, was originally expected to be operational by 2016, the delays now result in the expected project operation, if approved, to be after 2019. The work on the GWR has proceeded, however. If

necessary approvals, permits and contracts are completed in 2016 and 2017, there is the potential for initial operation of the GWR in late 2017, with water sales to Cal-Am in 2018.

2. Phase 2 Issues

This proceeding is bifurcated into two phases. Phase 1 addresses whether or not a Certificate of Public Convenience and Necessity (CPCN) should be granted for a desalination plant and related facilities. Phase 2 deals with the GWR and, in particular, whether applicant should be authorized by the Commission to enter into a WPA for GWR water. The Commission originally intended to address Phase 2 issues simultaneously with, or after, a decision on Phase 1 issues.

In a joint motion filed on April 18, 2016, eighteen parties, including the Commission's Office of Ratepayer Advocates (ORA), requested that the Commission issue a separate Phase 2 decision before addressing Phase 1 issues. In support, joint parties submitted that, given delays in the desalination project, a separate Phase 2 decision on the GWR and WPA, including issues related to the Monterey pipeline and pump station, could allow Cal-Am to take full advantage reasonably soon of two alternative water sources: (1) the GWR and (2) the ASR.²

The joint motion was granted. Hearings were held on Phase 2 issues in April and May 2016, with briefs filed in June 2016. A more detailed procedural history is in Appendix A to this decision.

² April 18, 2016 Joint Motion at 2.

Parties present three issues for resolution in Phase 2: (1) should applicant be authorized to enter into a WPA for purchase of GWR water; (2) should applicant be authorized to build the Monterey pipeline and Monterey pump station; and (3) should limited financing and ratemaking proposals for the pipeline and pump station be adopted. We determine for the reasons stated below that Cal-Am should be authorized to enter into the WPA for purchases of water from the GWR. Among other reasons, this provides Cal-Am and its ratepayers the best near-term supplemental water supply opportunity to reduce unauthorized diversions from the Carmel River by the end of the CDO period. We authorize construction of the Monterey pipeline and pump station to facilitate optimal use of the ASR and the GWR water, subject to applicant's compliance with a Mitigation Monitoring and Reporting Program (MMRP). We also authorize limited financing and ratemaking provisions. A brief summary of the positions of parties is contained in Appendix B.

3. Approval to Enter into Revised Water Purchase Agreement

Phase 2 issues, including a draft January 14, 2016 WPA, were addressed in proposed testimony served in January and March 2016. On April 8, 2016, the assigned Commissioner and assigned Administrative Law Judge (ALJ) issued a Joint Ruling requesting data with respect to, and identifying, a number of concerns with the draft WPA. A panel of witnesses composed of applicant, District, and Agency testified at the hearing on April 13, 2016, in response to the data requests and concerns. On April 25, 2016, a joint assigned Commissioner and Administrative Law Judge Ruling directed applicant to provide a revised WPA based on the testimony given April 13, 2016, along with addressing seven additional issues.

The revised WPA was provided in supplemental testimony served on May 19, 2016, and subject to cross-examination at hearing on May 26, 2016. The May 19, 2016 WPA is contained in Appendix C to this decision.

3.1. All Parties But One Support the Revised WPA

The GWR is widely supported by a diverse group of parties, and has backing from local leaders on the Monterey Peninsula, state lawmakers, federal legislators, the Fort Ord Reuse Authority, and the SWRCB. All parties except Water Plus support authorization by the Commission for applicant to enter into the Revised WPA.³

The principal arguments for opposition by Water Plus are based on cost and doubts concerning the quality of the GWR product water (i.e., toxicity related to the recharging of aquifers with agricultural drainage water).⁴ We find that the issues of GWR cost and water quality have been satisfactorily addressed by express provisions in the Revised WPA (e.g., WPA Paragraphs 16 and 15 on cost, and 14 on water quality, each discussed below), as explained and supported by testimony in April and May 2016. As a result, we are not persuaded by Water Plus's opposition.

In particular, Water Plus asserts that GWR costs may be several times those estimated by the Agency and District, and ratepayer costs might be as high as \$6,000 per acre-foot. (Water Plus Opening Brief at 9.) These assertions are unsupported by any credible evidence, and are contradicted by not only the testimony of applicant, District, Agency, and ORA, but also by the plain terms

³ June 6, 2016 Joint Parties' Opening Brief at 32.

⁴ June 6, 2016 Water Plus Opening Brief at 7. Water Plus has made a positive contribution to this proceeding at several junctures by highlighting the issue of GWR water quality.

of the proposed WPA. In particular, the WPA provides a first year soft cap of \$1,720 per acre foot. (WPA Paragraph 16; see Appendix C.) For the 30 year life of the agreement, the WPA establishes fundamental ratemaking principles that will guide the making of rates. For example, it establishes that rates are based on actual costs, applicant shall only pay for water it receives, applicant will only pay its proportionate costs, and rates are adjusted each year to equate rates with actual costs via an annual true-up (all discussed further below). (WPA ¶ 16.) It provides for a reasonably transparent budgeting and rate setting process, with budgets and supporting data displayed on the Agency and District webpages, and also data available by data request. (WPA ¶ 15; RT Vol. 16: 2669-2678.) The cost concerns of Water Plus are not credible.

Water Plus also alleges that some source waters (i.e., Blanco Drain and Reclamation Ditch) contain toxic substances (e.g., diazinon, chlorpyrifos) that will not be successfully treated in the advanced water treatment facilities of the GWR. The result, according to Water Plus, will be water that is a danger to the public. We find otherwise.

The assertions by Water Plus are unsupported by any credible evidence, and are contradicted by not only the testimony of applicant, District, and Agency, but also by the plain terms of the proposed WPA. In particular, the WPA provides a water treatment guarantee. (WPA Paragraph 14; see Appendix C.) Delivered water must at all times meet water quality requirements set by law.

3.2. Concerns Identified by Two Rulings

The assigned Commissioner and assigned ALJ raised numerous concerns in the Rulings dated April 8 and April 25, 2016. Those concerns included a possible unlawful delegation of Commission authority and responsibilities,

prejudice of Phase 1 issues, costs, prices, price formulas, potential for cross-subsidization with other customers of the GWR, the need for an addendum to the District and Agency GWR EIR, and a cost cap at a point of indifference for Cal-Am ratepayers (between the estimated cost of the larger desalination plant and the estimated higher cost of the GWR/WPA combined with the smaller desalination plant).

The May 19, 2016 revised WPA substantially addresses these concerns, as supported by the testimony provided by applicant, District, and Agency witnesses at hearings in April and May 2016. In particular, for example, the revised language removes objectionable language and resolves concerns about otherwise unlawful delegation of Commission authority and responsibilities to the Agency and District. Testimony clarifies that the WPA neither addresses nor or prejudices whether or not a desalination plant will later be authorized (Phase 1). The revised WPA improves the description and process for the annual true-up of actual costs with rates. It adds a specific statement of the fundamental ratemaking principles. It improves the “firewall” between Cal-Am and other users of GWR water to prevent cross-subsidization. It includes a reasonable price cap for the cost of GWR water in the first year. It affirms that in no circumstance shall the obligations of the Agency and District to deliver GWR water to Cal-Am be affected by the pendency of a Cal-Am application to the Commission for approval of a rate greater than the first year cost-cap, or a decision by the Commission to deny such a request. To a substantial degree, the concerns are satisfied by the revised WPA and explanatory testimony, as discussed more below.

Against this background and overview, we first address the specific tests we use to determine whether or not to authorize applicant to enter into the

WPA. We find all tests are met. We then comment on one provision of the WPA and require applicant to take specific actions with respect to that provision.

3.3. Tests for Consideration of Revised WPA

We judge the merits of the Revised WPA using two sets of criteria. First, parties argue the viability and reasonableness of the GWR and WPA can be measured by applying the nine criteria used in the Large Settlement Agreement.⁵ The Commission has not adopted the Large Settlement Agreement, and may or may not ultimately do so. Nonetheless, we agree with parties that the nine criteria are important elements in considering the viability of the GWR and the reasonableness of the WPA.

Second, our decision must rest on broader principles, including what is just, reasonable, and in the public interest. (*See* November 17, 2015 Ruling at 8, affirming position of the Marina Coast Water District - MCWD.) We first address the nine criteria. We then address the broader principles.

3.3.1. Nine Criteria

We use the nine criteria advocated by parties to assess the viability of the GWR and reasonableness of the WPA.

⁵ Joint Opening Brief at 2-3. The nine criteria are contained in Section 4.2 of the Large Settlement Agreement. The Large Settlement Agreement is Exhibit CA 44: Settlement Agreement of California-American Water Company, Citizens for Public Water, City of Pacific Grove, Coalition of Peninsula Businesses, County of Monterey, Division of Ratepayer Advocates, LandWatch Monterey County, Monterey County Farm Bureau, Monterey County Water Resources Agency, Monterey Peninsula Regional Water Authority, Monterey Peninsula Water Management District, Monterey Regional Water Pollution Control Agency, Planning and Conservation League Foundation, Salinas Valley Water Coalition, Sierra Club, and Surfrider Foundation, July 31, 2013.

Criterion 1: Final EIR

Criterion 1 requires that the Agency has approved the GWR pursuant to a certified Final EIR; no timely CEQA lawsuit has been filed; or, if a timely CEQA lawsuit has been filed, no stay of the GWR has been granted.

The Agency certified the GWR Project Final EIR on October 8, 2015. No timely litigation was filed. The GWR Final EIR includes an environmental review of the Monterey pipeline. Implementation of the WPA also requires a pump station to address hydraulic pressures and optimal transfer of water through applicant's system. The Agency prepared an Addendum to the GWR Final EIR to address the pump station. The Addendum was adopted at the June 20, 2016 meeting of the Agency. It is now final, and not subject to judicial review. Thus, Criterion No. 1 is satisfied.

Criterion 2: Permits

Criterion 2 states that the status of required permits is consistent with the published GWR development schedule and, for required permits not yet obtained, the weight of the evidence does not show any required permits are unlikely to be obtained in a timeframe consistent with the published schedule.

The schedule for the GWR (assuming timely Commission authorization of the WPA in 2016) has initial operation in late 2017; and delivery of water to applicant in early 2018. The record shows that the Agency is working diligently and quickly to obtain the outstanding federal and state approvals in line with the project schedule, and expects to obtain these outstanding approvals in time to complete construction and place the GWR in service on or about the projected first quarter of 2018 in-service date. The weight of the record evidence satisfies Criterion No. 2.

Criterion 3: Source Waters

Criterion 3 calls for an examination of whether there is sufficient legal certainty as to agreements or other determinations to secure delivery of source waters necessary to produce between 3,000 and 3,500 AFY of GWR water.

According to applicant, approximately 4,321 AFY of source water is needed to produce 3,500 AFY of produce water due to a 19 percent loss during the advanced treatment processes. To obtain the necessary source water, the Agency has entered into separate agreements with the City of Salinas and the Monterey County Water Resources Agency (MCWRA). The agreement with the City of Salinas alone provides the Agency with 4,045 AFY of industrial waste water (nearly all of the necessary 4,321 AFY), and no further approvals are needed for applicant to obtain this water.

The agreement with the MCWRA provides 8,701 AFY, comprised of Salinas industrial wastewater and new source water from that the Salinas storm water system, Blanco Drain, and the Reclamation Ditch. The MCWRA agreement states that the Agency has priority on the first 4,321 AFY of these new source waters. Moreover, the Agency has rights to excess winter wastewater as source water for the GWR. All approvals for the source waters from this agreement are obtained, with limited exception (and the MCWRA has applied for the necessary additional water rights, with that application process still ongoing, for the Blanco Drain and the Reclamation Ditch).

Thus, the Agency will have rights to sufficient source waters to meet the contractual obligations under the GWR WPA. Once water right approvals for source waters from the Blanco Drain and the Reclamation Ditch are obtained,

the MCWRA Agreement alone would provide adequate⁶ source waters for the Agency's obligations under the GWR WPA.⁷ In the interim, however, the Agency has adequate source water from the City of Salinas coupled with winter wastewater and the priority allocation from MCWRA to produce 3,500 AFY of water for Cal-Am. Therefore, the weight of the evidence in the record satisfies Criterion No. 3.

Criterion 4: Water Quality And Regulatory Approvals

Criterion 4 examines whether the weight of the evidence indicates that the California Department of Health or the Regional Water Quality Control Board (RWQCB) will decline to accept or approve the GWR extraction or GWR treatment and injection processes, respectively.

While the approval process before the Department of Drinking Water (DDW) (in collaboration with the California Department of Health) and the RWQCB is ongoing, the evidence indicates that the approvals will be forthcoming. Applicant states that RWQCB and DDW have been extensively involved in the development of the GWR since July 2013. The RWQCB was specifically consulted about the GWR during its review under CEQA. Applicant expects the forthcoming permit issued by the RWQCB (in consultation with the DDW) to require continuous water quality testing and sampling, including pesticides of local concern. MPWPCA has completed many

⁶ *Id.*, p. 9:5-9:8. See also *Id.*, Attachment G. 42 *Id.*, p. 9:5-10:4. 43 *Id.*, p. 9:9-12. 44 *Id.*, p. 9:12-14. 45 *Id.*, p. 9:14-15. 46 *Id.*, p. 10:17. 47 *Id.*, p. 10:17-20. 48 *Id.*, p. 10:20-26. 49 *Id.*, p. 11:13-15. 16.

⁷ Exh. PCA-4, Opening Testimony of M. Nellor, dated January 22, 2016, updated April 8, 2016, p. 3:19- 23.

of the steps needed for obtaining the needed groundwater replenishment permit and is expeditiously moving forward with the remaining steps.

Water Plus has raised a number of concerns regarding the safety of GWR water. As discussed above, these concerns are unfounded. The RWQCB and DDW are closely reviewing the project to ensure that GWR water meets or exceeds the safety requirements outlined in California Law. Once the GWR begins operations, the project's permit is expected to require continuous water quality testing and sampling, including the pesticides about which Water Plus⁸ is concerned. Moreover, the WPA contains a specific water quality requirement and guarantee. (WPA Paragraph 14.)

In sum, many steps have been and will be taken to assure that GWR water will be safe for customers and the public. Thus, the weight of the evidence in the record satisfies Criterion No. 4.⁹

Criterion 5: GWR Schedule Compared to Desalination Schedule

Criterion No. 5 requires a showing that the GWR is on schedule to be operable on or before the later of (a) the then-effective date of the CDO or such

⁸ *Id.*, pp. 3:28-4:2. ⁶⁴ *Id.*, p. 4:9-10. ⁶⁵ *See*, e.g., Exh. WP-1, R. Weitzman Testimony dated February 22, 2013; Exh. WP-8, R. Weitzman Supp. Testimony. *See* Exh. PCA-6, M. Nellor Rebuttal Testimony dated March 22, 2016 (comprehensive response to Water Plus's concerns about the safety of the GWR Project's product water); Exh. ORA-16, S. Rose Rebuttal Testimony dated May 8, 2016, pp. 3:3-5:5 (same). ⁶⁷ Exh. PCA-6, p. 3:17-20. ⁶⁸ *Id.*, p. 4:3-6. ⁶⁹ *Id.*, p. 1:17-3:2.

⁹ Criterion 4 also recognizes that some of the Large Settlement parties entered into a separate Sizing Settlement Agreement, which bears on the configuration of the desalination plant and thus the market for GWR product water that is a subject of this Phase 2 proceeding. The sizing of the desalination plant could well be influenced by the outcome of Phase 2.

other date as the SWRCB states in writing is acceptable or (b) the date the MPWSP desalination project is scheduled to become operable.

The GWR is expected to begin initial operation in late 2017, with deliveries of water to applicant in early 2018. The CDO deadline is December 31, 2021. Thus, the GWR is expected to be operable before the CDO deadline.

Applicant projects the current in-service date of the desalination plant to be in the second quarter of 2019. (Applicant's October 31, 2015 update.) On March 17, 2016, Commission Staff announced that the Final EIR/EIS for the desalination project will not be completed until late 2017. Unlike the GWR, however, the environmental review of the desalination plant is not complete and there are risks related to such review and possible challenge, perhaps affecting the project in-service date. Overall, the best evidence is that GWR water will be available one or two years (if not more) in advance of the availability of water from Cal-Am's desalination project, and well before the CDO deadline. Criterion No. 5 is satisfied.

Criterion 6: Status of GWR Engineering

Criterion 6 looks to the level of design completed for the GWR, and requires a showing that the GWR is at least at the 10 percent level with support from a design report. Alternatively, this criterion can be met for the GWR based on a showing that the GWR's level is similar to or more advanced than the level of engineering for the desalination project.¹⁰

¹⁰ Exh. PCA-5, p. 2:4-18. 76 *Id.* 77 Exh. PCA-1, p. 12:10-18; *See also*, Exh. PCL-8, Amended Application for Order Modifying State Water Board Order WRO 2009-0060 (CDO). 78 Exh. CAW-44, Large Settlement Agreement, p. 7. 21.

This criterion was addressed, and satisfied, by the testimony of Robert Holden, Principal Engineer at the Agency. Specifically, the design for various components of the GWR as of January 22, 2016 ranged from 10 percent to 100 percent leading to Holden's uncontested conclusion that the design of the GWR Project is at or above a 10% level of engineering. Criterion 6 is met.

Criterion 7: GWR Funding

Criterion 7 requires a GWR funding plan in sufficient detail to be accepted as an application for a State Revolving Fund loan.

The Agency submitted an application for the State Revolving Fund loan to the SWRCB on May 28, 2014. The SWRCB deemed the Agency's application complete on December 2, 2015. The Agency has also received additional certainty that it will obtain financing at an interest rate of one percent from the SWRCB. In particular, on February 16, 2016, the SWRCB voted to continue the one percent interest rate on State Revolving Fund loan applications submitted and deemed complete by December 2, 2015, and further identified the GWR as one that would qualify for the one percent interest rate. Thus, Criterion 7 is met.

Criterion 8: Reasonableness of WPA Terms

Criterion 8 requires that applicant, Agency, and District have agreed upon a WPA whose terms are just and reasonable.

Applicant, Agency and District revised the WPA to address concerns raised in the April 8, and April 25, 2016 Rulings of the assigned Commissioner and assigned ALJ, as described above. The revisions substantially satisfy those concerns. Further, the terms of the revised WPA are just and reasonable with respect to the cost and water quality concerns of Water Plus.

The WPA contains a first year cost cap that no party argues is unreasonable. Moreover, the WPA provides that only the actual cost will be

charge to Cal-Am and Cal-Am ratepayers. The first year cost will be adjusted downward if the first year cost is less, while a price over \$1,720 is subject to Commission review and approval.

No party makes a credible case that the WPA terms are not just and reasonable. Subject to our further directions to applicant below, we find that Criteria 8 is satisfied.

Criterion 9: Reasonableness of the GWR Revenue Requirement

Criterion 9 requires that the revenue requirement for the combination of the GWR with the smaller desalination project is just and reasonable when compared to the revenue requirement for the larger desalination project alone.

In general, future revenue requirements for either the combined GWR with small desalination plant or the larger desalination plant remain uncertain and depend on assumptions about eventual construction costs, financing costs, escalation rates, power delivery method, return water requirements, delays, and lawsuits, among other factors. Nonetheless, there is no credible dispute among parties as to the reasonableness of the \$1,720 per acre-foot first year cost cap. Among other parties, ORA agrees that this is a reasonable cost cap.

Applicant, Agency, and District evaluated the first year indifference cost for the GWR using low and high cost scenarios over a reasonable range of fixed and variable costs measured against the lifecycle total revenue requirement, the net present value of the lifecycle revenue requirement, and the first year revenue requirement. (The indifference point is where ratepayers are indifferent between the larger desalination plant and the GWR/WPA combined with the smaller desalination plant). (See Exhibit JE-2, pages 7-8, and Attachments 5

and 6.) The first year indifference cost ranges from \$1,178 to \$2,062 per AFY. The soft cap of \$1,720 is reasonable given the wide range of results.

Several parties also argue that a first year premium, if any, is reasonable given several externalities, or non-quantified benefits, of the WPA. We discuss those under broader other principles below.

Beyond the first year, future revenue requirements remain uncertain but ORA and other parties argue that lifecycle costs for the two options should also be considered in addition to the first year revenue requirement. A life-cycle analysis provides an opportunity to consider estimated replacement costs; estimated escalation of operation, maintenance and energy costs; and different financing costs. It is entirely plausible that, over the range of variables during the 30-year life of the WPA, the net present value of the revenue requirement for the smaller desalination plant with GWR is less than the net present value of the revenue requirement for the larger plant. It is nearly unanimous among parties, however, that even if a revenue requirement premium is required, the overall benefits of the GWR justify this premium. Those benefits are discussed under broader principles below. Overall, the comparison test in Criterion 9 is met.

3.3.2. Broader Principles

To the extent not addressed in the nine criteria above, we must also consider broader principles, including what is just, reasonable, and in the public interest. We find the revised WPA satisfies those principles.

Numerous environmental, water policy, and other public benefits would accrue from the GWR and the WPA according to Surfrider Foundation, Landwatch Monterey County, Planning and Conservation League Foundation, Sierra Club, Public Trust Alliance (PTA), MCWD, ORA, and others. Applicant, Agency, District, and others make clear that the WPA is needed to secure

financing for the GWR and make the GWR a viable project. The GWR, supported by the WPA, would provide many benefits.

For example, the GWR would substantially reduce applicant's reliance on unlawful diversions from the Carmel River, thereby decreasing unacceptable environmental impacts on the river's ecosystem and resident fish (including steelhead). The GWR would substantially reduce the size of applicant's proposed desalination plant; thereby lessening the desalination plant's greenhouse gas emissions, discharge of highly saline brine into the sensitive marine environment, and use of important groundwater resources. MCWD even suggests that GWR supply with expanded ASR utilization, along with the aggressive conservation implemented to date, could allow applicant to achieve the full CDO compliance without the need for any desalination plant. (MCWD Opening Brief at 9.)

Other benefits include a material schedule advantage, with the GWR anticipated to be operable much sooner than the desalination plant. Further, the GWR supports water supply resilience and reliability (i.e., the benefit of a portfolio approach to water supply on the Monterey Peninsula compared to one large plant). The GWR also implements and encourages State policies regarding water recycling through early adoption of a water reuse project. As advocated by PTA, the GWR project not only helps save the Carmel ecosystem, it furthers the public trust.

On the basis of all these factors, we find that the GWR is viable, and the WPA for purchases of GWR water is just, reasonable and in the public interest.

3.4. Cal-Am participation in Agency/District rate setting

The WPA provides a period as short as 15 days for the WPA parties to review estimated budgets and the Boards of the respective entities to adopt new

rates.¹¹ (See WPA Paragraph 15). Agency and District state that they will make every reasonable effort to provide those estimates with more than 15 days for review by the parties and the public, and will publish those estimates with supporting data on their respective web sites, or make them readily available by data request.

We encourage the Agency and District to provide more than 15 days for that review and comment period before the estimates are available for adoption by each Board. Providing reasonable due process to parties and the public, in our experience, will likely take more than 15 days.

We expect Cal-Am to be an active participant on behalf of its ratepayers before the Agency and the District. Therefore, we require Cal-Am to intervene in each Agency/District rate proceeding in which Cal-Am has concerns that its ratepayers will be overcharged, bear a disproportionate cost burden, or face any other issues, and provide written comments stating those concerns to the Agency/District, with simultaneous service of those comments on the Commission's Water Division. Similarly, if Cal-Am has no concerns with the estimated budgets, proposed rates, or other issues, we require Cal-Am to serve comments on the Agency and District affirming that it has no concerns, with simultaneous service of those comments on the Commission's Water Division.

4. Need for Pipeline and Pump Station

The April 25, 2016 Ruling on the parties' Joint Motion for a separate Phase 2 decision set dates for service of supplemental and rebuttal testimony largely to address further issues and concerns with respect to a potentially

¹¹ WPA parties are the Agency, District, and Cal-Am.

revised WPA. Citing the impacts of Cal Am's diversions on the Carmel River and its ecosystem, the Ruling noted water supply matters must be addressed "without unreasonable delay."¹² The Ruling then recognized that "[t]o the extent the Monterey pipeline is related to the GWR and WPA . . . it is timely and responsible to consider the Monterey pipeline now."¹³ The May 9, 2016 Joint Supplemental Testimony, served in accordance with the April 25, 2016 Ruling, addressed the Monterey pipeline and pump station. For the reasons stated below, we authorize the pipeline and pump station.

All parties support or are neutral on the Monterey pipeline and pump station with the exception of ORA, PTA and Water Plus. A panel of witnesses (Cal-Am, MPWMD and MRWMD) sponsoring the Joint Supplemental Testimony¹⁴ testified in support of the pipeline and pump station at hearings in this proceeding on May 26, 2016. The panel's testimony confirms that the Monterey pipeline is needed and will be utilized by Cal-Am independent of whether the Commission ultimately approves Cal-Am's desalination plant. The Monterey pipeline and pump station will allow Cal-Am to maximize the benefits of water produced by the GWR and through utilization of the ASR, allowing Cal-Am to reduce reliance on Carmel River diversions. The GWR is scheduled to produce water so that Cal-Am can extract water from the Seaside Groundwater Basin by February 2018.¹⁵ If approved in a timely Phase 2 decision, Cal-Am expects to have the Monterey pipeline and pump station in

¹² April 25, 2016 Assigned Commissioner Ruling at 4.

¹³ *Id.* at 4.

¹⁴ May 18, 2016 version of Joint Supplemental Testimony at 16.

¹⁵ Exh. PCL-8 at 3-4.

service to take advantage of the ASR permit window that starts in December 2017. Cal-Am argues that this would also allow it to begin taking full advantage of GWR water when that water can be extracted in 2018.¹⁶

Despite opponent's concerns (discussed more fully below), we find that the preponderance of record evidence shows that the Monterey pipeline and pump station are necessary (independent of the proposed desalination plant) to maximize the use of water from the GWR and ASR.¹⁷ We also find persuasive and accept the evidence of the panel testimony in the May 18, 2016 Joint Supplemental Testimony and at the May 26, 2016 hearings¹⁸ that there is a pressure zone ("trough") currently limiting water movement within Cal-Am's Monterey service area due to an absence of infrastructure sufficient to manage the desired flow in light of existing hydraulic gradient lines.¹⁹ System schematics²⁰ illustrating the trough that prevents the movement of water from the north to the south of the Cal-Am service area are set out in Appendix D.

¹⁶ Reporter's Transcript (RT) Vol. 19 at 3196; Joint Parties' June 6, 2016 Opening Brief at 13-14, 26.

¹⁷ Exh. JE-2, at 14:7-17:16; RT, at 3152:9-3153:3; RT, at 3159:23-3160:1. 113 RT, at 3196:22-24. 114 RT, at 3196:28-3197:4-16. The Joint Opening Brief at 27 notes: "The Monterey pipeline will convey water in two directions: (1) from the Carmel River in the southern area of the system to the existing ASR wells in the northern area, and (2) from the Seaside Basin extraction wells in the northern area of the system to customers in the southern area of the distribution system. The first purpose is tied to the ASR; the second, to the GWR Project." (Footnote omitted)

¹⁸ RT, Vol. 19 (May 26, 2016) at 3159-3160, 3162-3164, 3168, 3201-3207, 3232-3236.

¹⁹ Exh. JE-2, p. 13:16-19. 116 *Id.* p. 16:11-13. 117 *Id.*, p. 14:8-9. 118 *Id.*, p. 14:9-13. 119 *Id.*, at 10:14-17. 120.

²⁰ Joint Exhibits 4-8.

We find persuasive the evidence showing that without the Monterey Pipeline up to a 100 pounds per square inch pressure increase would be required to serve customers north of the trough, and move water efficiently in other areas throughout the system. This pressure increase would risk leaks and blowouts in the system.²¹ The record shows that the Monterey pipeline and pump station are needed to address issues caused by the trough and to allow for the conveyance of water between the southern and northern areas of the system.²² Such movement is necessary to obtain the maximum benefits from the GWR and ASR, so as to allow for the greatest reductions in Carmel River diversions.

We agree with the panel²³ that detailed modeling of the trough, as urged by ORA,²⁴ is not needed before accepting evidence of the effects of the trough. The ASR uses the watershed to store excess water in the winter months, which is then used in the dry summer months.²⁵ Cal-Am's permit allows, if all the conditions on the Carmel River are met, for the diversion of approximately 6,500 gallons per minute which can then be injected into the ASR project for storage purposes.²⁶ As David Stoldt, General Manager of the District, testified:

Actually in a wet year, not even the wettest year, it would be about 1500 to 1700 acre feet [that could be stored]. When you look at the

²¹ RT, Vol.19 (May 26, 2019) at 3162-3163.

²² *Id.* at 3159.

²³ *Id.* at 3168-3169, 3205-3206.

²⁴ ORA's June 6, 2016 Opening Brief at 20 (regarding Monterey Pump Station); ORA's June 13, 2016 Reply Brief at 5-6 (regarding both Monterey Pipeline and Pump Station).

²⁵ RT Vol. 19 at 3195 (May 26, 2016).

²⁶ *Id.* at 3162-3163.

current demand in the system, that's approximately 17 percent of total demand. So it's a significant increase availability of the supply.²⁷

This would be an additional amount of water that could be used by Cal-Am to reduce its Carmel River diversions. Due to current system constraints created by the hydraulic gradient Cal-Am is not able to inject the full amount allowed under its permit. The Monterey pipeline, however, would allow it to do so and maximize ASR injections. The Monterey pipeline will allow extracted ASR water to move past the gradient and to the southern portion of Cal-Am's system.²⁸

ORA opposes Commission approval of the Monterey pipeline and pump station in Phase 2. PTA joins with ORA's opposition. ORA argues that: (1) an independent need for the Monterey pipeline and pump station has not been shown; (2) existing infrastructure is sufficient to maximize use of water from the GWR and ASR; and (3) the construction of the Monterey pipeline and pump station should be delayed until there is more certainty on the desalination plant's design.²⁹ These claims are not compelling.³⁰

First, the testimony and evidence establishes an independent need for the pipeline and pump station.³¹ In addition, the GWR Final EIR explains that a

²⁷ *Id.* at 3163-4.

²⁸ RT, at 3163:26-3164:4. 130 RT, at 3163:10-25. Exh. JE-2, at 14:14-21. *Id.*, at 15:8-10; at 16:2-8.

²⁹ ORA Rebuttal Testimony at 7-8.

³⁰ Exh. JE-2, at 11:22-25. 138 *Id.*, at 12:16 - 13:6. 139 RT, at 3214:1-24.

³¹ Exh. DRA-19, Rebuttal Testimony, dated May 19, 2016, at 3:21-25. 141] For example, in D.12-07-008, Decision Granting Motion to Withdraw Petition to Modify Decision 10-12-016, issued July 18, 2012 in A.04-09-019, at 8, the Commission noted the following: "Cal Am stated that whether or not the Regional Desalination Project proceeds, Cal Am facilities approved in

Footnote continued on next page

hydraulic trough in Cal-Am's distribution system prevents water from being delivered in adequate quantities from the Seaside Groundwater Basis to most of Monterey and all of Pacific Grove, Pebble Beach, Carmel Valley, and the City of Carmel. (Joint Parties Opening Brief at 34, citing RT, pp. 3241-42, and Exhibit CAW-48.)

Second, the evidence shows that the existing infrastructure is not sufficient to maximize use of water from the GWR and ASR. Cal-Am convincingly shows that ORA's analysis used calculations based on quarterly data that do not adequately recognize monthly and daily operations to move water where it is needed, nor recognize effects on the whole system. Moreover, we are persuaded by MCWD that, even if the record is not as robust as might be ideal, the record is nonetheless clearly sufficient to establish that the pipeline and pump station are critical infrastructure components required to maximize use of the GWR and ASR.

Finally, we are not persuaded by ORA and PTA that construction of the pipeline and pump station should be delayed until there is more certainty regarding the desalination plant. The desalination plant may or may not ever be built (particularly if MCWD is correct that the GWR, ASR and conservation may be enough to satisfy the terms of the CDO). The pipeline and pump station, however, are needed even without the desalination plant. PTA also favors

D.10-12-016 would be needed to more expeditiously move water between the northern and southern areas of Cal Am's distribution system, improve storage, and expand the aquifer storage and recovery (ASR) system." More specifically, Cal Am contended that the Monterey Pipeline, the Seaside Pipeline, the Terminal Reservoir, the ASR Pipeline, the ASR Recirculation and Backflush Pipelines, the ASR Pump Station, and the Valley Green Pump Station would all be necessary to improve and enhance Cal Am's system. *See* also RT at 3224:5-10; *see* also RT, at. 3215:18 - 3216:16; 3217:22 - 3218:4.

postponing construction of the pipeline and pump station so that, if later built, they may be optimally sized and located to fully account for other external conditions, such as climate change and improved recycled water technology. Waiting for more and better information, and improved technology, is always tempting, but optimal use of the GWR and ASR require the pipeline and pump station now. The evidence is sufficient to authorize the pipeline and pump station subject to the costs being reasonable, and the facilities being used and useful, both discussed more below.

Water Plus opposes development of the pipeline in favor of what it asserts is a less costly and less disruptive alternative. We are not convinced. The GWR Final EIR properly considers alternatives. Water Plus seeks to advance its preferred alternative in the wrong forum (at the Commission rather than the Agency and District in their EIR process). Further, Water Plus presents no credible evidence here. Finally, Water Plus presents its views far too late in our process to be reasonably considered.³²

5. Environmental Review of Pipeline and Pump Station

5.1. Introduction

While the schedule for the final preparation of the state EIR and federal EIS for the desalination plant and related facilities has been necessarily delayed, the need for water in the Cal-Am Monterey service area has not diminished. The use of the GWR and ASR, as described above, however, also requires other facilities.

³² Water Plus fails to present its alleged alternative in evidentiary testimony, but first identifies this alternative in its June 6, 2016 Opening Brief.

In particular, Cal-Am proposes to upgrade the existing Hilby Avenue Pump Station, and use it to pressurize/convey potable water within the Cal-Am system to assist the existing ASR facilities during injection. The upgraded pump station will be used primarily during the wet weather period when excess water is permitted to be captured from the Carmel River and is conveyed to the Seaside Basin for aquifer storage and recovery. Cal-Am would also construct and operate the pipeline that was previously evaluated in the EIR prepared for the GWR as the “Alternative Monterey Pipeline.” This pipeline would connect to the Hilby Avenue Pump Station and would enable Cal-Am to use existing water rights to divert additional excess Carmel River flows during the winter and deliver the water to the City of Seaside and to the ASR facilities. Cal-Am’s proposal is referred to in this section as the pipeline/pump station project.

We here consider the pipeline/pump station project pursuant to the California Environmental Quality Act of 1970 (as amended, Public Resources Code Section 21000, *et seq.*). Today’s decision follows the June 20, 2016, action by the Board of Directors of the MPWMD to approve the (1) the Monterey Pipeline, (2) the Hilby Avenue Pump Station; and (3) Cal-Am Water Distribution System (WDS) Amendment Permit #M16-01-L3 (the “MPWMD Project”).

5.2. Prior Environmental Review

On August 21, 2006, the MPWMD Board of Directors certified the EIR and Environmental Assessment (EIR/EA) for “Phase 1” of the ASR project. The pipeline/pump station project will be used to convey excess water diverted from the Carmel River to the ASR injection sites, and thus constitutes a part of the larger ASR project.

On August 24, 2006, the MPWMD filed a Notice of Determination (NOD) for the ASR project with the State of California Office of Planning and Research. The NOD states that the ASR project will not have a significant effect on the environment, and that those findings were made pursuant to the provisions of CEQA.

On April 16, 2012, the MPWMD Board of Directors adopted an Addendum to the EIR/EA for the ASR project (now referred to as “Addendum No. 1” to the ASR Project) and approved the full implementation of “ASR Water Project 2.” As noted above, the pipeline/pump station project will be used to convey excess water diverted from the Carmel River to the ASR injection sites, and thus constitutes a part of the larger ASR Water Project.

On April 16, 2012, the MPWMD filed an NOD for the ASR Water Project 2 with the State of California Office of Planning and Research. The NOD states that the ASR Project 2 will not have a significant effect on the environment, and that those findings were made pursuant to the provisions of CEQA.

On October 8, 2015, the Board of Directors of the MRWPCA certified the Final EIR for the GWR. The Monterey pipeline is a part of the larger GWR.

On October 8, 2015, the MRWPCA filed an NOD for the GWR with the State of California Office of Planning and Research. The NOD states that the GWR will have a significant effect on the environment, that a Statement of Overriding Considerations was adopted for the GWR, and that those findings were made pursuant to the provisions of CEQA.

On June 20, 2016, the MPWMD Board of Directors adopted an Addendum that amended the previously-certified ASR Project EIR/EA and GWR EIR in connection with the MPWMD Project (this addendum is known as

“Addendum No. 2” to the ASR Project EIR/EA and “Addendum No. 1” to the GWR EIR). The pipeline/pump station project is part of the larger MPWMD Project.

On June 23, 2016, the MPWMD filed an NOD with the State of California Office of Planning and Research. The NOD states that the MPWMD Project will have a significant effect on the environment, that a Statement of Overriding Considerations was adopted for the MPWMD Project, and that those findings were made pursuant to the provisions of CEQA.

5.3. CEQA Compliance

CEQA applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to inform governmental decision-makers and the public about potential, significant environmental effects of the proposed activities. The pipeline/pump station project is subject to CEQA. Cal-Am requests that the Commission authorize the construction of the pipeline/pump station project. In considering this request, the Commission must also consider the environmental consequences of the project by acting as either a lead or responsible agency under CEQA.

The lead agency is either the public agency that carries out the project,³³ or the agency with the greatest responsibility for supervising or approving the project as a whole.³⁴ Here, the MPWMD is the lead agency under CEQA for the pipeline/pump station project. It prepared the environmental documents for the project, and the Commission is a responsible agency because it has jurisdiction to issue a permit for the pipeline/pump station project. As a

³³ CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(a).

³⁴ CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(b).

responsible agency under CEQA, the Commission must consider the lead agency's environmental documents and findings before acting on or approving the pipeline/pump station project.³⁵ Also, as a responsible agency, the Commission is responsible for mitigating or avoiding only the direct or indirect environmental effects of those parts of the pipeline/pump station project which it decides to carry out, finance, or approve.³⁶

Prior to approving or carrying out a project for which an environmental impact report has been certified that identifies one or more significant environmental effects, all public agencies must make one or more written findings for each of those significant impacts, accompanied by a brief explanation of the rationale for each finding. (CEQA § 21081(a); Cal. Code Regs., Tit. 14 ("CEQA Guidelines"), §§ 15091 & 15092) This requirement applies to the lead agency and responsible agencies under CEQA. (CEQA § 21081; CEQA Guidelines §§ 15091 & 15096(h).) As specified in the CEQA Guidelines, the possible findings are:

- 1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment;
Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency; or
- 2) Economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the EIR.

³⁵ CEQA Guidelines, Sections 15050(b) and 15096.

³⁶ CEQA Guideline Section 15096(g).

These findings provide the specific reasons supporting the Commission's decisions under CEQA as they relate to the authorization of the pipeline/pump station project. The findings are supported by substantial evidence in the Commission's administrative record. (CEQA Guidelines § 15091(b))

5.4. Incorporation by Reference

All CEQA project impacts and mitigation measures, including those discussed below, are analyzed in greater detail in the environmental documents referenced under the "Prior Environmental Review" section above, all of which are incorporated herein by reference.

CEQA mitigation measures and reporting responsibilities for the pipeline/pump station project are also summarized in the MMRP that was adopted by the MPWMD Board of Directors on June 20, 2016, as Attachment 17-B to the MPWMD June 20, 2016 meeting packet. A copy of the MMRP is attached to this Decision as Appendix E.

Also considered are all exhibits and testimony in Phases 1 and 2 of this proceeding that address the Monterey Pipeline and Monterey Pump Station. We also incorporate by reference the MPWMD's Resolution No. 2016-12 authorizing the pipeline/pump station project, together with all attachments and all documents referenced in such Resolution No. 2016-12 as being part of that record of proceedings. The Commission has reviewed all of these documents, together with other supporting documents in the record, and finds these documents to be adequate for our decision-making purposes.

5.5. Environmental Review

As noted above, on June 20, 2016, the MPWMD Board of Directors adopted an Addendum that amended the previously-certified ASR Project EIR/EA and GWR EIR in connection with the MPWMD Project (this

Addendum is known as “Addendum No. 2” to the ASR Project EIR/EA and “Addendum No. 1” to the GWR EIR). On June 23, 2016, the MPWMD filed an NOD with the State of California Office of Planning and Research. The MPWMD has adopted an MMRP that lists all project mitigation measures and reporting responsibilities, in compliance with CEQA Section 21081.6 and CEQA Guidelines Section 15097. The MMRP is in Appendix E to this decision.

As directed by CEQA, the Commission has been deemed to have waived any objection to the adequacy of the Addendum that was adopted by the MPWMD on June 20, 2016, and that Addendum, together with the underlying ASR Project EIR/EA and the underlying GWR EIR, (together, the “Pipeline/Pump Project CEQA Documentation”) is conclusively presumed to comply with CEQA for purposes of use by the Commission. (CEQA § 21167.3(b); CEQA Guidelines §§ 15096 (e)(2) & 15231) Based on the administrative record, the Commission finds that no Subsequent EIR or Supplement to the Pipeline/Pump Project CEQA Documentation is necessary pursuant to the requirements of CEQA. (CEQA Guidelines §§ 15162 & 15163) Prior to issuing this Decision on the pipeline/pump station project, the Commission has considered the environmental effects of the pipeline/pump station project as shown in the Pipeline/Pump Project CEQA Documentation. (CEQA Guidelines § 15096 (f)) The Pipeline/Pump Project CEQA Documentation specifies mitigation measures for identified impacts, and a mitigation monitoring and reporting plan (i.e., the MMRP) is in place to document the mitigation measures and how they are to be implemented.

The CEQA findings specified below address those significant project impacts identified in the Pipeline/Pump Project CEQA Documentation that are subject to the Commission’s jurisdiction. The first section below identifies

potentially significant impacts that cannot be avoided or substantially lessened to a less than significant level in connection with the pipeline/pump station project. The second section below addresses project-level impacts that are avoided or substantially lessened to a less than significant level by mitigation measures incorporated into, or required as a condition of, the pipeline/pump station project. The last section below addresses cumulative impacts that are avoided or substantially lessened to a less than significant level by mitigation measures incorporated into, or required as a condition of, the pipeline/pump station project. The Commission finds that all other impacts would be less than significant in accordance with the conclusions of the Pipeline/Pump Project CEQA Documentation.

As described below, after implementation of all feasible mitigation measures, the pipeline/pump station project will have a significant unavoidable impact in the area of nighttime construction noise.

5.5.1. Significant and Unavoidable Impacts

After implementation of all feasible mitigation measures, the pipeline/pump station project will have a significant and unavoidable impact due to the temporary increase in ambient noise levels during nighttime construction of the Monterey Pipeline in residential areas. Certain mitigation measures (including Mitigation Measure NV-1b, requiring preparation of a noise control plan for nighttime pipeline construction, and Mitigation Measure NV-2b, requiring neighborhood notice of the commencement of construction activities with respect to the pipeline alignments) have been imposed by the MPWMD on the Monterey Pipeline portion of the pipeline/pump station project. The Commission also imposes such mitigation measures on the pertinent components of the pipeline/pump

station project as a condition of approval of the pipeline/pump station project, and implementation will be monitored through the MMRP.

However, while these mitigation measures will substantially reduce nighttime construction noise associated with the Monterey Pipeline, there are no feasible mitigation measures or alternatives to avoid or reduce such nighttime construction noise to a less than significant level. Accordingly, the Commission adopts the Statement of Overriding Considerations set forth below.

5.5.2. Significant Avoided Project-Level Impacts

The Pipeline/Pump Project CEQA Documentation describes various project-level environmental impacts of the pipeline/pump station project. These potential impacts are related to air quality, biological resources, cultural resources, noise, aesthetics, energy, hazards and hazardous materials, land use, and transportation. However, implementation of the mitigation measures set forth in the MMRP will mitigate all such project-level environmental impacts (with the exception of nighttime construction noise, discussed in Section 6.5.1 above) to a less than significant level.

The pipeline/pump station project will not result in any new significant project-level impacts, increase the severity of significant project-level impacts previously identified in the Pipeline/Pump Project CEQA Documentation as significant, or cause any environmental effects not previously examined in the Pipeline/Pump CEQA Documentation. All significant project-level impacts to which the components of the pipeline/pump station project would contribute have been discussed in the Pipeline/Pump Project CEQA Documentation.

5.5.3. Significant Avoided Cumulative Impacts

The Pipeline/Pump Project CEQA Documentation describes various potentially significant cumulative impacts that may result from the pipeline/pump station project. These potential cumulative impacts include considerable contributions to (1) significant cumulative regional emissions of PM₁₀,³⁷ (2) significant cumulative impacts on marine water quality due to the potential exceedance of the California Ocean Plan³⁸ water quality objectives for several constituents, and (3) significant cumulative impacts on marine biological resources due to the potential exceedance of the California Ocean Plan water quality objectives for several constituents. However, implementation of the mitigation measures set forth in the MMRP will mitigate all such cumulative environmental impacts to a less than significant level.

The pipeline/pump station project will not result in any new significant cumulative impacts, increase the severity of significant cumulative impacts previously identified in the Pipeline/Pump Project CEQA Documentation as significant, or cause any environmental effects not previously examined in the Pipeline/Pump CEQA Documentation. All significant cumulative impacts to which the components of the pipeline/pump station project would contribute have been discussed in the Pipeline/Pump Project CEQA Documentation.

³⁷ PM₁₀ refers to respirable particulate matter with a diameter of less than 10 microns.

³⁸ The SWRCB first adopted a California Ocean Plan in 1972. (*See* Section 13000 of Division 7 of the California Water Code (Stats. 1969, Chap. 482.)) It has been revised and modified several times thereafter. Its purpose is to protect the quality of ocean waters for the use and enjoyment of Californian's by requiring control of the discharge of waste to ocean waters. The plan is available on the web site of the SWRCB.

5.6. Alternatives

There is substantial evidence in the record that the alternatives identified in the Pipeline/Pump Project CEQA Documentation: (1) would not avoid the significant unavoidable impact from nighttime construction noise related to the Monterey Pipeline; (2) are not feasible; and/or (3) would fail to meet most of the basic project objectives for the ASR Project and/or the GWR. The reasons for rejecting each alternative are discussed in the Pipeline/Pump Project CEQA Documentation and incorporated by reference herein. The reasons for rejecting each alternative are independent and each reason alone is sufficient to support a determination that the alternative is infeasible.

5.7. Mitigation Monitoring and Reporting Program

MPWMD has, as described above, approved a plan to guide the monitoring and reporting of CEQA mitigation compliance. The MMRP guides implementation of all CEQA project mitigation measures by assigning implementation and reporting responsibilities and specifying timelines. The MMRP, which lists all Project mitigation measures and reporting and is attached to this decision as Appendix E, is adopted by this Commission in connection with this decision as a condition of project approval. No additional CEQA mitigation measures are being imposed in connection with this decision, so no additional CEQA MMRP is required.

5.8. Statement of Overriding Considerations

The Commission finds that the remaining significant and unavoidable effect on the environment caused by the implementation of the pipeline/pump station project (i.e., the temporary increase in ambient noise levels during nighttime construction in residential areas) remains acceptable when balanced with the economic, social, technological, and other project

benefits, due to the reasons set forth in the GWR Findings and Statement of Overriding Considerations adopted by the MRWPCA in Resolution 2015-24 in connection with its certification of the GWR. These reasons as stated in the GWR Findings and Statement (each of which constitutes a separate and independent basis for overriding the significant environmental effect of the pipeline/pump station project) include the following:

- The pipeline/pump station project would replace 3,500 AFY of unauthorized Carmel River diversions for municipal use with additional groundwater pumping;
- The pipeline/pump station project would provide up to 4,500 - 4,750 AFY and up to 5,900 AFY in drought years of additional recycled water to Salinas Valley growers for crop irrigation;
- The Salinas Valley Groundwater Basin is in overdraft and the pipeline/pump station project would reduce the volume of water pumped from Salinas Valley aquifers;
- The pipeline/pump station project would increase water supply reliability and drought resistance;
- The pipeline/pump station project would maximize the use of recycled water in compliance with the state Recycled Water Policy; and,
- The pipeline/pump station project would reduce pollutant loads from agricultural areas to sensitive environmental areas including the Salinas River and Monterey Bay.

The Commission finds that these reasons are supported by the Pipeline/Pump Project CEQA Documentation and other information in the administrative record. Accordingly, the Commission hereby adopts this Statement of Overriding Considerations, which is attached to MPWMD Resolution No. 2016-12 and incorporated herein by this reference.

5.9. Conclusion

The Commission has independently reviewed the Project CEQA Documentation associated with the pipeline/pump station project. The Commission finds that the Project CEQA Documentation was prepared in accordance with CEQA and is adequate for the Commission's decision making purposes. The Commission further finds that the conclusions contained in the Project CEQA Documentation is supported by substantial evidence and support the Commission's decision as follows:

- 1) As set forth above, the Commission finds that the mitigation measures identified in the MMRP will reduce all impacts associated with the pipeline/pump station project to less-than-significant levels, save for the temporary construction impact to noise resources.
- 2) The Commission hereby adopts the implementation of the mitigation measures contained in the MMRP as a condition of approval of the pipeline/pump station project.
- 3) The Commission finds that benefits associated with the pipeline/pump station project outweigh the significant and unavoidable impact to noise resources that will result from temporary construction activities as set forth above in the Statement of Overriding Considerations.
- 4) The Commission finds that none of the conditions described in Public Resources Code Section 21166 and CEQA Guidelines Section 15162 are present with respect to the Commission's approval of the pipeline/pump station project, and therefore no subsequent or supplemental environmental review is required.

5.10. Custodian of Documents

The Commission is designated as the custodian of the documents and other materials that constitute the record of proceedings on which this decision

is based. Such documents and other materials are located in the Commission's offices located at 505 Van Ness Avenue, San Francisco, CA 94102.

6. Financing and Ratemaking

The Joint Parties propose financing and ratemaking treatment for the Monterey pipeline and pump station that is generally consistent with traditional ratemaking for capital projects, and is largely based on the approach to which settling parties agreed in the Large Settlement Agreement.³⁹ This includes provisions wherein Cal Am will track in a segregated section of the Cal-Am-only facilities memorandum account: (1) the costs of the Monterey pipeline and pump station (including allowance for funds used during construction [AFUDC]), (2) a pro-rated portion of the engineering and environmental costs of the entire Cal-Am-only facilities, (3) and any portion of the Monterey pipeline or pump station placed in service prior to the Commission approving the costs to be included in plant in service and recovered in base rates. Joint Parties also propose that the memorandum account will draw interest at the actual cost to finance the project.⁴⁰ As the Monterey pipeline and pump station facilities become used and useful, Joint Parties recommend that they be put into rates via two Tier 2 advice letter filings.

The estimated cost of the Monterey pipeline and pump station is \$50.3 million, which includes \$46.5 million for the pipeline and \$3.8 million for the pump station.⁴¹ Joint Parties propose a cost cap of \$50.3 million, with authority to request higher amounts, if necessary. Cal-Am has agreed to fund

³⁹ June 13, 2016 Joint Parties' Reply Brief at 11.

⁴⁰ *Ibid.*

⁴¹ *Id.* at 2; Exh. JE-2.

\$7.4 million of the initial costs of the Monterey pipeline and pump station with short-term debt provided by its parent company.⁴² The remaining costs will be funded with Cal Am's debt and equity.⁴³

The rate making process proposed by the Joint Parties for the pipeline and pump station is consistent with our process for other memorandum account capital projects. No party makes a convincing case that any element of this proposal should not be adopted. We have not yet adopted the Large Settlement Agreement and may or may not later do so. Nonetheless, Joint Parties proposed treatment is reasonable and is adopted.

6.1. Cost Cap

Joint Parties propose a cost cap of \$50.3 million based on the most recent estimates for the pipeline and pump station. ORA is concerned that these estimates are greater than presented by applicant in 2013. This is not surprising, however. The current cost estimates for the pipeline reflect an additional 6,000 feet (20 percent) in length, and are based on actual bids, allocation of incurred and future implementation costs, and contingency reflective of actual bids.

No party makes a compelling argument to adopt a different cost cap. We adopt a cost cap of \$46.5 million for the pipeline and \$3.8 million for the pump station. Each cost cap is independent of the other. Cal-Am may apply by Tier 3 advice letter for additional recovery if actual costs for either the pipeline or pump station exceed the cost cap for either project.

⁴² May 18, 2016 version of Joint Supplemental Testimony at 21.

⁴³ *Id.* at 20; Exh. JE-2.

6.2. Advice Letters

The Joint Parties propose that Cal-Am make two separate Tier 2 advice letter filings to place the costs of the pipeline and pump station into rates. As proposed, the first would be on April 30, 2017. It would cover costs for the pipeline and pump station through March 30, 2017, and would reflect recovery of the used and useful portions of the facilities to date. The second Tier 2 advice letter would be filed once the pipeline and pump station are completed and fully in service. In support, Joint Parties assert that this approach will limit AFUDC, to the ultimate benefit of ratepayers. No party makes a compelling case that another approach should be used.

We adopt the Joint Parties' proposal. In particular, we note that recovery under the first advice letter is for the portions of the facilities that are used and useful up to March 30, 2017. Used and useful in this case is pipeline and pump station costs spent on construction up to March 30, 2017.⁴⁴ We agree with Joint Parties that this will moderate AFUDC, to the benefit of ratepayers. It is also generally consistent with the principle of ratepayers paying the costs of the facilities they use, and not unreasonably deferring those costs to future ratepayers. Cal-Am must include a showing with each advice letter that the

⁴⁴ See D.06-12-040 for similar treatment of preconstruction and other costs incurred before a plant is placed into service. We said there, for example, that "the Commission has authorized water utilities to recover costs related to a capital project...prior to the completion or construction of the capital project when...unusual or exigent circumstances surrounding the plant's construction warranted recovery or interim relief. [Footnote deleted.]" (Mimeo at 22.) Unusual and exigent circumstances exist with the pipeline and pump station. For example, the SWRCB requires that applicant receive our approvals to enter into WPA and to construct the pipeline and pump station by December 31, 2016, and that construction start by September 30, 2017, or applicant and its ratepayers will face serious consequences. (SWRCB Order WR 2016-0016 at 20-23.)

funds have been spent reasonably.⁴⁵ We do not require that the first advice letter be filed on April 30, 2017, but by that date. We require the second advice letter be filed within 90 days of the date the projects are completed and fully in service.

7. Conclusion

The evidence shows that the Revised WPA is reasonable, and Cal-Am is authorized to enter into it. Cal-Am is authorized to build the pipeline and pump station, subject to the MMRP. The cost cap for the pipeline is \$46.5 million, and the cost cap for the pump station is \$3.8 million. Finally, we authorize Cal-Am to file Tier 2 advice letters for cost recovery of the pipeline and pump station, with applicant including a showing that the costs have been spent reasonably. The proceeding remains open to resolve Phase 1 issues.

8. Comments on Proposed Decision

The proposed decision of assigned ALJ Weatherford in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code, and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were timely filed on _____, 2016, and reply comments were filed by _____ on _____.

⁴⁵ See D.06-12-040 at 13-15. Urgent and exigent circumstances require that we authorize construction of the pipeline and pump station now. Just as we did with respect to engineering and environmental costs in D.06-12-040, we will give further consideration to the reasonableness of the costs expended, and require applicant to make that showing with the advice letter.

9. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Gary Weatherford is the assigned ALJ in this proceeding.

Findings of Fact

1. In 1995, the SWRCB found that Cal-Am did not have the legal right to about 10,730 acre-feet annually of its then-current diversions from the Carmel River, and that the diversions were having an adverse effect on the river environment.

2. In 2009, the SWRCB ordered that Cal-Am cease and desist from its unlawful diversions of Carmel River water by December 31, 2016.

3. This proceeding is bifurcated into Phase 1 (desalination plant CPCN) and Phase 2 (GWR WPA).

4. Consideration of Phase 1 issues has been delayed.

5. A joint motion dated April 18, 2016 asserts that, given Phase 1 delays, Phase 2 should be considered first since the GWR WPA with limited additional infrastructure may provide substantial assistance with water supply in the near term.

6. The April 18, 2016 motion was granted.

7. On July 19, 2016 the SWRCB extended Cal-Am's CDO deadline to December 31, 2021.

8. Phase 2 issues are: (1) should Cal-Am be authorized to enter in a WPA for purchase of product water from the GWR; (2) should Cal-Am be authorized to construct the Monterey pipeline and pump station; and (3) should limited financing and ratemaking proposal be adopted.

9. Cal-Am filed a revised WPA on May 19, 2016 (a) in response to issues and concerns raised by the assigned Commissioner and Administrative Law Judge

in a Ruling dated April 8, 2016; (b) to incorporate clarifying and explanatory testimony given April 13, 2016; (c) and to respond to a Joint Ruling dated April 25, 2016 that raised additional concerns and issues.

10. All parties but Water Plus support authorization by the Commission for Cal-Am to enter into the revised WPA.

11. The opposition by Water Plus is based on concerns about costs and water quality.

12. The assertions made by Water Plus are contradicted by testimony and the terms of the WPA itself and, therefore, are not persuasive.

13. Parties recommended that the nine criteria used in the Large Settlement Agreement be applied to the GWR project and the Revised WPA even though the Commission has not yet acted on the Large Settlement Agreement.

14. The GWR project and the WPA meet the nine criteria used in the Large Settlement Agreement.

15. The WPA also meets broader tests of reasonableness based on numerous environmental, water policy, scheduling, reliability, public trust, and other public benefits.

16. The GWR project is viable, and the revised WPA is just, reasonable and in the public interest.

17. The WPA provides a period as short as 15 days for WPA parties to review the estimated budgets and the Boards of the respective entities to adopt new rates.

18. Agency and District state that they will make every reasonable effort to provide the budget estimates with more than 15 days for review and will publish the estimates with supporting data on their respective websites and/or make them readily available by data request.

19. It is important for Cal-Am to take an active involvement each year when WPA rates are set to inform the Agency and District whether or not Cal-Am has any concerns with the Agency and District proposals.

20. All parties support or are neutral on the Monterey pipeline and pump station, with the exception of ORA, PTA, and Water Plus.

21. Testimony conclusively demonstrates that the Monterey pipeline and pump station is necessary and will be utilized by Cal-Am independent of whether the Commission approves the desalination plant.

22. The Monterey pipeline and pump station will allow Cal-Am to maximize the use of GWR and ASR water, and reduce reliance on Carmel River diversions.

23. If the Commission timely approves the Monterey pipeline and pump station, Cal-Am expects that it will be able to take full advantage of GWR water in 2018.

24. The Monterey pipeline and pump station are needed to address issues caused by a pressure zone “trough” currently limiting water movement between the southern and northern areas of the Cal-Am Monterey service area, such transfers being necessary to obtain the maximum benefits from the GWR and ASR.

25. Sufficient evidence substantiates the need for the pipeline and pump station, and detailed modeling of the trough is unnecessary.

26. Due to current system constraints Cal-Am is unable to inject the full amount of potential diverted water from the Carmel River (6500 gallons per minute) allowed under its permit for injection into the ASR.

27. The Monterey pipeline would allow Cal-Am to maximize its ASR injections.

28. The evidence establishes that there is an independent need (separate from the desalination plant) for the pipeline and pump station; existing infrastructure is insufficient to maximize use of water from the GWR and ASR; and construction of the pipeline and pump station should not be delayed until there is more certainty about the desalination plant and other influences (e.g., global warming, new technologies).

29. Applicant proposes to upgrade the existing Hilby Avenue Pump Station and construct and operate the pipeline that was evaluated in the EIR prepared for the GWR as the “Alternative Monterey Pipeline.”

30. The MPWMD acted as lead agency under CEQA for purposes of considering and approving Cal-Am’s proposed upgrade of the pump station and construction of the pipeline, and approved the pipeline/pump station project on June 20, 2016.

31. On June 26, 2012, MPWMD filed a Notice of Determination for the pipeline/pump station project, stating that the MPWMD Project will have a significant effect on the environment, that a Statement of Overriding Considerations was adopted for the MPWMD Project, and that those findings were made pursuant to the provisions of CEQA.

32. Cal-Am has asked the Commission to issue an additional discretionary approval for the pipeline/pump station project.

33. The Commission is a responsible agency for purposes of approving the pipeline/pump station project and environmental impacts associated with that project are within the scope of the Commission’s permitting process.

34. Under CEQA, the Commission must consider the environmental impacts associated with its approval of the pipeline/pump station project and identify measures to avoid or reduce such impacts.

35. In considering the environmental impacts of the pipeline/pump station project, the Commission considers the record of proceedings before the lead agency, inclusive of the environmental documentation and analyses considered by the lead agency and the findings and conclusions reached by the lead agency with the pipeline/pump station project's impacts.

36. The Commission reviewed the Project CEQA Documentation to determine whether the measures contained therein avoid or reduce direct or indirect impacts associated with the pipeline/pump station project to the extent feasible.

37. The Commission has independently reviewed the Pipeline/Pump Station Project CEQA Documentation, finds that it was prepared in accordance with CEQA, is adequate for the Commission's decision making purposes and, with implementation of a MMRP, reasonably mitigates adverse impacts.

38. All environmental impacts associated with the pipeline/pump station project have been avoided or mitigated to the extent feasible as set forth in Appendix E.

39. The pipeline/pump station project will have one significant and unavoidable impact to noise resources as more fully described in Appendix E, and a statement of overriding considerations for this impact is adopted.

40. Joint Parties propose financing and ratemaking treatment for the pipeline and pump station that is generally consistent with traditional ratemaking projects and is largely based on the approach to which settling parties agreed in the Large Settlement Agreement.

41. The estimated cost of the Monterey pipeline and pump station is \$50.3 million (\$46.5 million for the pipeline and \$3.8 million for the pump station).

42. Joint Parties propose a cost cap of \$50.3 million with authority to request higher amounts via the advice letter process if actual costs exceed the cap.

43. Cal-Am has agreed to fund \$7.4 million of the initial costs of the Monterey pipeline and pump station with short-term debt provided by its parent company; the remaining costs will be funded with Cal-Am's debt and equity.

44. The Joint Parties propose that Cal-Am make two Tier 2 advice letter filings to place the costs of the Monterey pipeline and pump station in rates; the first would cover costs for the pipeline and pump station through March 30, 2017 and reflect recovery of the used and useful portions of the facilities to that date; the second advice letter would be filed once the pipeline and pump station are complete and fully in service.

45. The two Tier 2 advice letter approach will limit the accrual of AFUDC costs, to the ultimate benefit of ratepayers.

46. No party to this proceeding makes a convincing case that any element of the proposed financial and ratemaking treatment should not be adopted.

47. The Commission finds that the remaining significant and unavoidable effect on the environment caused by the implementation of the pipe line and pump station project (i.e., the temporary increase in ambient noise levels during nighttime construction in residential areas) remains acceptable when balanced with the economic, social, technological, and other project benefits, due to the reasons set forth in (i) the Ground Water Replenishment Findings and Statement of Overriding Considerations adopted by the Monterey Regional Water Pollution Control Agency in Resolution 2015-24 in connection with its certification of the GWR and (ii) and other information in the administrative record.

48. The pipe line and pump station project would replace 3,500 AFY of unauthorized Carmel River diversions for municipal use with additional groundwater pumping.

49. The pipe line and pump station project would provide up to 4,500 – 4,750 AFY and up to 5,900 AFY in drought years of additional recycled water to Salinas Valley growers for crop irrigation.

50. The Salinas Valley Groundwater Basin is in overdraft and the pipe line and pump station project would reduce the volume of water pumped from Salinas Valley aquifers.

51. The pipe line and pump station project would increase water supply reliability and drought resistance.

52. The pipe line and pump station project would maximize the use of recycled water in compliance with the state Recycled Water Policy.

53. The pipe line and pump station project would reduce pollutant loads from agricultural areas to sensitive environmental areas including the Salinas River and Monterey Bay.

Conclusions of Law

1. The GWR is viable and the Revised WPA is just, reasonable, and in the public interest.

2. Applicant should be authorized to enter into the revised WPA.

3. Applicant should be required to participate in all Agency and District rate proceedings under the WPA, with written comments to the Agency and District stating concerns, if any, with the Agency and District proposals along with applicant's alternative proposals, or stating applicant has no concerns, with simultaneous service of a copy of those comments on the Commission' Director of Division of Water and Audits.

4. The Commission's CEQA determinations and approval of the pipeline/pump station project are based on the Commission's exercise of independent judgment and analysis.

5. Applicant should be authorized to construct the pipeline and pump station, subject to the MMRP in Appendix E.

6. The joint parties' proposed financing and ratemaking treatment for the pipeline and pump station is reasonable and should be adopted, including applicant funding \$7.4 million of the initial costs with short-term debt provided by its parent company.

7. The cost cap on the pipeline/pump station project should be \$46.5 million for the pipeline and \$3.8 million for the pump station, with authority for applicant to file a Tier 3 advice letter if costs exceed the cost cap.

8. Applicant should be authorized to file a Tier 2 advice letter on April 30, 2017 to seek recovery of the used and useful portion of the actual pipeline and pump station costs incurred through March 30, 2017.

9. Applicant should be authorized to file a Tier 2 advice letter upon completion of the pipeline and pump station to seek recovery of the remaining amount of the used and useful portion of the actual pipeline and pump station costs when the facilities are completed and fully in service.

10. The Commission should adopt the Statement of Overriding Considerations, which is attached to Monterey Peninsula Water Management District Resolution No. 2016-12 and incorporated herein by this reference.

ORDER

IT IS ORDERED that:

1. California-American Water Company is authorized to enter into the Revised Water Purchase Agreement contained in Appendix C.
2. California-American Water Company (Cal-Am) shall participate in each Monterey Regional Water Pollution Control Agency (Agency) and Monterey Peninsula Water Management District (District) rate proceeding involving the Revised Water Purchase Agreement (WPA). Cal-Am shall serve written comments to the Agency and District in that rate proceeding. The written comments shall state any and all concerns of Cal-Am with Agency and District proposals, and provide alternative recommendations. If Cal-Am has no concerns, the written comments shall state it has no concerns. At the time Cal-Am serves its comments on the Agency and District, it shall simultaneously serve a copy of the comments on the Commission's Director of the Division of Water and Audits.
3. California-American Water Company is authorized to upgrade the existing Hilby Avenue Pump Station and construct and operate the Monterey pipeline that was evaluated in the Environmental Impact Report prepared for the Pure Water Monterey Groundwater Replenishment Project as the "Alternative Monterey Pipeline."
4. Construction of the pipeline and pump station is conditioned on compliance by California-American Water Company with the Mitigation Monitoring and Reporting Program contained in Appendix E.
5. Within 30 days after completion of the pipeline, and the pump station, California-American Water Company shall notify the Division of Water by letter that those facilities are used and useful.
6. The authorization to build the pipeline and pump station is subject to a cost cap of \$46.5 million for the pipeline, and \$3.8 million for the pump

station. If actual costs exceed either cap, California-American Water Company is authorized to file a Tier 3 advice letter to seek additional recovery.

7. California-American Water Company (Cal-Am) is authorized to make two separate Tier 2 advice letter filings to place the costs of the pipeline and pump station into rates. Cal-Am shall file the first Tier 2 advice letter by April 30, 2017 to cover costs for the pipeline and pump station through March 30, 2017, reflecting the recovery of actual costs for the used and useful portions of the facilities to date. Costs for the used and useful portions are the actual reasonable expenditures spent on construction. Cal-Am shall include a showing of reasonableness with its advice letter. Cal-Am shall file the second Tier 2 advice letter within 90 days after the pipeline and pump station are completed and fully in service, and shall include a showing of reasonableness with its advice letter.

8. California-American Water Company (Cal-Am) shall track in a separate section of the its facilities memorandum account: (a) the costs of the pipeline and pump station (including allowance for funds used during construction), (b) a pro-rated portion of the engineering and environmental costs of the entire Cal-Am facilities, (c) and any portion of the pipeline or pump station placed in service prior to the Commission approving the costs to be included in plant in service and recovered in base rates.

9. The Rulings of the Administrative Law Judge(s), and the Joint Rulings of the assigned Commissioner and the Administrative Law Judge(s), are affirmed.

10. The Commission hereby adopts this Statement of Overriding Considerations, which is attached to Monterey Peninsula Water Management District Resolution No. 2016-12 and incorporated herein by this reference.

11. Application 12-04-019 remains open to address Phase 1 issues.

This order is effective today.

Dated _____, at San Francisco, California.